No. 76-757

In the Supreme Court of the United States

OCTOBER TERM, 1976

STERLING COLORADO BEEF COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

MOTION TO AFFIRM

DANIEL M. FRIEDMAN,
Acting Solicitor General,

DONALD I. BAKER,
Assistant Attorney General,

CARL D. LAWSON
WILLIAM D. COSTON,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

MARK L. EVANS,
General Counsel,

CHARLES H. WHITE, JR.,
Associate General Counsel,

RAYMOND MICHAEL RIPPLE,
Attorneys,
Interstate Commerce Commission,
Washington, D.C. 24023.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-757

STERLING COLORADO BEEF COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States and the Interstate Commerce Commission move that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from the judgment of a three-judge district court (J.S. App. 1a-9a) affirming an order of the Interstate Commerce Commission which approved a restructuring of trailer-on-flat-car (TOFC) railroad rates throughout the country (J.S. App. 13a-46a).[1] The

---

[1]The district court also reviewed the Commission's orders in a separate proceeding involving reparations for certain TOFC movements under previous rates. Its judgment remanding that proceeding to the Commission is also before this Court on appeal in *Burlington Northern, Inc., et al. v. Sterling Colorado Beef Co.*, No. 76-672.

Commission's decision approved a rate structure, more reflective of railroad operating costs, that established common rates for groupings of certain western origin points.

In early 1970, a group of railroads[2] filed with the Commission schedules proposing new or revised TOFC rates and charges, and proposing new rules, regulations, and practices affecting those rates and charges (340 I.C.C. 214, 215). Numerous shippers, including Sterling Colorado Beef Company, the appellant herein, filed protests to the proposed rates. The Commission suspended the effective date of the schedule and instituted an investigation. In its report and order issued in December 1970, Division 2 of the Commission found that the proposed rate schedule, including the groupings of the western origin points, was just and reasonable (*id.* at 246).

Upon reconsideration, the entire Commission affirmed the findings of Division 2, with certain modifications not pertinent here (J.S. App. 13a-46a). The Commission also found that, so long as the carriers grouped the local western rates within the guidelines established in *City of Wilmington* v. *Alabama G.S.R. Co.*, 316 I.C.C. 709, 319 I.C.C. 620, the rates would not be determined to be unduly preferential or prejudicial in violation of Section 3(1) of the Interstate Commerce Act, 24 Stat. 380, as amended, 49 U.S.C. 3(1) (J.S. App. 36a-38a).

The Commission subsequently clarified its decision in response to a petition by the railroads by advising the railroads that Sterling, Colorado, must be placed in a grouping different from Denver, Greeley, and Pueblo (J.S. App. 47a-48a). The railroads then grouped Sterling with McCook, Nebraska, and established an eastbound rate for

---

[2]The railroads involved are enumerated at 340 I.C.C. 215 n. 2.

that new grouping which was one cent lower than the eastbound rate for the Denver grouping. This action prompted appellant to file its own petition for clarification. The Commission then issued a further order, holding that "the local western rates on singletrailer shipments from the groups in which Sterling is placed must reflect a spread under the rates from the group in which Denver is placed of at least five cents per hundred weight" (J.S. App. 50a-51a). Appellant thereupon filed a further petition for clarification, and the Commission responded by issuing another order stating that its prior order required a spread of *at least* five cents between Sterling and Denver on local western rates on single-trailer shipments to Chicago, and that it did not require cancellation of any rate providing a spread in excess of five cents (J.S. App. 51a-52a).

Appellant then filed a complaint in the United States District Court for the District of Colorado seeking to set aside the Commission's decision insofar as it approved the new Sterling rate. The district court sustained the Commission's orders. The court concluded that the Commission acted reasonably by permitting grouping of origins instead of requiring distance-related rates (J.S. App. 7a). The court observed that "[t]here is no controlling law requiring that the Commission establish rates which are distance related" and concluded that "there is substantial evidence in the record supporting the determinations made" (J.S. App. 7a-8a). This included evidence with respect to "traffic flow, distribution of terminal costs, empty-trailer return ratio to volume of TOFC traffic and motor competition * * *" (J.S. App. 6a).

ARGUMENT

The judgment of the district court is correct, and the appeal presents no question warranting plenary consideration by this Court.

Appellant contends that the district court "abdicated its reviewing function" by failing "to identify the substantial evidence which purportedly supported the administrative decision and * * * to explain how the purported substantial evidence rationally related to the agency result" (J.S. 10). The contention is insubstantial.

This Court has never held that a court reviewing an agency decision under the substantial evidence standard must identify in a written opinion the specific evidence that it finds to be substantial. Cf. *Reyes* v. *Secretary of Health, Education and Welfare*, 476 F. 2d 910, 912 n. 1 (C.A. D.C.). It is sufficient if the reviewing court examines the record and states its conclusion that there is a substantial evidentiary basis for the agency's findings. See *Illinois C.R. Co.* v. *Norfolk & W.R. Co.*, 385 U.S. 57, 65-66.[3]

Appellant's contention reduces to the claim that, contrary to the district court's conclusion, the Commission's determination is not supported by substantial evidence. But appellant "has not met its burden of demonstrating that the [district court] misapprehended or grossly misapplied the substantial-evidence standard." *Mobil Oil Corp* v. *Federal Power Commission*, 417 U.S. 283, 330.

---

[3]*Nickol* v. *United States*, 501 F. 2d 1389 (C.A. 10), on which petitioner relies, is not applicable. The issue in *Nickol* was whether the district court had properly granted summary judgment under Rule 56, Fed. R. Civ. P., in the face of allegations that the agency's decision was not supported by substantial evidence. That issue is not present in this case. Moreover, *Nickol* required only that the district court "indicate at least in general terms" the substantial evidence it found so that the court of appeals would know how the district court reached its conclusion. *Id.* at 1392. The district court here met that test (J.S. App. 6a). As this Court recently reiterated in *Ralston Purina Co.* v. *Louisville & Nashville R.R. Co.*, No. 75-1015, decided June 14, 1976, weighing the evidence and resolving evidentiary conflicts are tasks for the Commission, not the courts.

Thus, appellant argues (J.S. 17-23) that the Commission should have adopted distance-related rates rather than allowing origin grouping. But this Court has long recognized the propriety of origin or destination grouping for ratemaking purposes. *Ayrshire Collieries Corp.* v. *United States* 335 U.S. 573; *Illinois Commerce Comm'n* v. *United States*, 292 U.S. 474, 486; *United States* v. *Illinois Cent. R.R.*, 263 U.S. 515, 522.

Here, as in other instances, the Commission reasonably determined that "adopting a maximum limitation on the grouping of points, rather than a distance scale, [would ensure that] all shippers and localities are treated fairly, and yet the railroads gain a freer hand to adjust rates in response to competition" (J.S. App. 37a). As the district court correctly stated, this "adjustment of rates in light of changing technologies and transportation conditions is precisely the kind of delicate balancing process for which the Commission's expertise deserves the most deference" (J.S. App. 6a).

Contrary to the appellant's assertion, the Commission took into account the specific situation of appellant within the new rate structure. Sterling was placed in a grouping different from other Colorado cities. The accommodation of the Sterling shippers gives more weight to Sterling's distance from Chicago "without depriving the carriers of a fair opportunity to restructure their heretofore depressed rates" (J.S. App. 39a).

The Commission carefully balanced a variety of transportation factors, including distance and competition. Appellant is not happy with the balance, but it has cited "no controlling law requiring that the Commission establish rates which are distance related" (J.S. App. 7a-8a).

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

DONALD I. BAKER,
Assistant Attorney General.

CARL D. LAWSON,
WILLIAM D. COSTON,
Attorneys.

MARK L. EVANS,
General Counsel,

CHARLES H. WHITE, JR.,
Associate General Counsel,

RAYMOND MICHAEL RIPPLE,
Attorney,

Interstate Commerce Commission.

JANUARY 1977.